IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 637 of 2004
In
SPECIAL CIVIL APPLICATION No. 11510 of 2002
With
LETTERS PATENT APPEAL No. 1376 of 2003
In
SPECIAL CIVIL APPLICATION No. 533 of 2003
With
LETTERS PATENT APPEAL No. 1377 of 2003
In
SPECIAL CIVIL APPLICATION No. 12514 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HALVAD NAGAR PALIKA - Appellant(s)

Versus

SURENDRANAGAR JILLA MAZDOOR SANGH - Defendant(s)

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Appearance :

Letters Patent Appeal No. 637/04.

Mr. Dhaval Vyas, learned counsel for the appellant
Mr. K.R. Koshti, learned counsel for the respondent No.1.

Letters Patent Appeal No. 1376/03
Mr. K.R. Koshti, learned counsel for the appellant
Mr. Dhaval Vyas, learned consel for Respondent Nos.1&2
Mr. Hemant Prachchhak, AGP for Respondents Nos.3

Letters Patent Appeal No. 1377/03

Mr. K.R. Koshti, learned counsel for the appellant
Mr. Dhaval Vyas, learned consel for Respondent No.1
Mr. Hemant Prachchhak, AGP for Respondents Nos.2,3 & 4
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/07/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.All the three matters raise a common question of law, therefore, are being disposed of by this common judgment.

2. The facts necessary for disposal of the present appeals are that at the request of as many as 9 persons, Reference (LCD) No. 8 of 1993 was made to the Labour Cort, Surendranagar. The submission of those 9 workmen was that as they had worked for 240 days in a given year, therefore, they have acquired some status, and therefore their termination, without observing the legal requirement was falling within the mischief of illegal retrenchment. During pendency of the said Reference, one Shri Atul, son of Amratlal Pandya, made an application that he be also allowed to be

joined in the proceedings. After hearing the parties, the learned Labour Court, Surendranagar directed that no relief could be given to Shri Atul Pandya, but however, names of the other 9 persons be empanelled in a list and as and when the vacancy is available or vacancy is created in the new set-up, looking to the qualifications held by those persons, employment be given to them.

3. Being aggrieved by the dismissal of the claim Shri Atul Pandya, preferred Special Civil Application No. 533 of 2003, against non-confirmation in the services, Shri Praful Kantilal Yagnik and 8 others preferred Special Civil Application No. 12514 of 2002, while being aggrieved by the directions of maintaining the list and to provide employment in future to such persons, Halvad Nagarpalika filed Special Civil Application No. 11510 of 2002. The learned Single Judge had dismissed all the writ applications, therefore, all the three sets of original petitioners have filed these separate Letters Patent Appeals.

4. Mr. Koshti, learned counsel for the appellant Atul Pandya in Letters Patent Appeal No. 1376 of 2003 submitted that unfortunately for some lapses, either on the part of the appellant himself or his counsel, the award made in his favour on 15.3.1998 in Reference

(LCS) No. 7 of 1992 by the learned Labour Court, Surendrangar could not be brought to the notice of the learned Presiding Officer, who disposed of Reference (LCD) No. 8 of 1993, therefore, this Court should interfere in the matter. Placing his strong reliance upon the said award, he submitted that in Reference (LCS) No. 7 of 1992 a finding has been recorded in his favour that he had worked for 240 days and was entitled to reinstatement and in light of that award, he was reinstated. Confronted with these facts, Mr. Dhawal Vyas, learned counsel for the respondent-Halvad Nagarpalika was unable to contest the claim of Atul Pandya. He, however, only submitted that the courts below were not unjustified in rejecting the claim if the facts were not brought to their notice. After giving our anxious consideration to the facts and the earlier award made on 15.3.1998 in Reference (LCS) No. 7 of 1992, we must hold that the appellant of Letters Patent Appeal No. 1376 of 2003 was entitled to be included in the list along with nine others.

5. So far as the appeal of Halvad Nagarpalika and the appeal filed by other 9 persons are concerned, we must immediately observe that the fate of their appeals including the appeal of Shri Atul Pandya shall be governed by the Full Bench judgment of this Court in

the matter of **Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, reported in 2004 (3) GLR 1841.** The Full Bench in para-12.1.13 has issued the following guidelines:-

> "12.1.13. xx xxx xxx xxx
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> [1] If casual workers or daily-rated workers are not required by the local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future, those who are eligible and qualified from and amongs the relieved workmen shall be preferred by waiving the age-limit.
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> [2] If the workmen who have continued for years as temporary employees, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.
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> [3] The question of regularisation can also be considered by the authorities before terminating services provided the workers are eligible on the sanctioned posts.
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> [4] If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of

law/rules/circulars within the budgetary provisions. “

As the said guidelines are good enough and are sufficient to take care of the rights of all concerned, we do not think that we are required to say anything beyond what has been said by the Full Bench. All the appeals stand disposed of in view of the above-referred guidelines.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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